

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DALE J. PALMATEER,

Plaintiff,

VS.

AETNA LIFE INSURANCE CO., et al.

Defendants.

Case No.: 2:10-cv-01261-GMN-PAL

ORDER

Pending before the Court is Defendant Aetna Life Insurance Company's Motion to Strike Portions of Plaintiff's Complaint (ECF No. 6), which Defendant filed on August 3, 2010. Plaintiff has filed no response to the Motion.

For the reasons that follow, the Court grants Defendant's motion.

I. BACKGROUND

Plaintiff brought this lawsuit to recover benefits under an employee benefit plan that falls within the purview of the Employee Retirement Security Act of 1974 (“ERISA”). (*See* Compl., Ex. A, ECF No. 1.) In response, Defendant filed this Motion to Strike, in which it requests that the Court strike the portions of Plaintiff’s Complaint that seek damages not recoverable under ERISA. (Mot. Strike 2:3–11, ECF No. 6.) Specifically, Defendant seeks to have excluded the portion of the Complaint in which Plaintiff seeks an order requiring Defendant to instruct and educate its group policyholders on the issues of conversion coverage and extended benefits; the portion that seeks an order requiring Defendant to reopen and pay all claims similar to those of Plaintiff; and the portion wherein Plaintiff seeks consequential and economic damages beyond the recovery of benefits. (*Id.*)

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1 **II. DISCUSSION**


2 According to the Local Rules of Practice in this Court, responses to a motion must be
3 served by an opposing party within fourteen days after service of the motion. D. Nev. R. 7-2(a).
4 “The failure of an opposing party to file points and authorities in response to any motion shall
5 constitute a consent to the granting of the motion.” D. Nev. R. 7-2(d); *see Obiajulu v. Rite Aid*
6 *Headquarters Corp.*, No. 2:07-cv-1287-KJD-LRL, 2010 WL 3168054, at *1 (D. Nev. Aug. 9,
7 2010).

8 Defendant filed its Motion to Strike on August 3, 2010; thus, Plaintiff was required to
9 respond no later than August 20, 2010. Plaintiff, however, has failed to file any response at all.
10 Under the Local Rules, such a failure to respond is tantamount to Plaintiff agreeing that
11 Defendant’s motion should be granted. Accordingly, the Court grants Defendant’s Motion to
12 Strike.

13 **CONCLUSION**

14 IT IS HEREBY ORDERED that Defendant Aetna Life Insurance Company’s Motion to
15 Strike (ECF No. 6) is GRANTED.

16 DATED this 30th day of August 2010.

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20 GLORIA M. NAVARRO
21 UNITED STATES DISTRICT JUDGE
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